

Supreme Court Upholds Limitation of Action Clauses in Nationwide Insurance Contracts

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[Full text of the Court's opinion](#)

In *Dominish v. Nationwide Ins. Co.*, the Ohio Supreme Court recently held that an insurer can enforce a limitation-of-action clause in its insurance contract where the clause is unambiguous and the insurer does not admit liability or hold out a reasonable hope of adjustment and by doing so, induce the insured to delay filing a lawsuit until after the contractual limitation period has expired.

In this case, a storm caused a tree to fall on Dominish's home. After inspecting the home, Nationwide denied coverage for roof repairs, any damages to the contents of the home, and any resultant mold caused by the storm. However, Nationwide twice issued a check to Dominish for damage that it believed to be covered under the policy. Dominish refused to cash Nationwide's checks and returned them both as insufficient. Throughout the course of their communications, Nationwide repeatedly explained its position that certain categories of damages were not covered under his policy, and expressly reminded him of the provision in his policy governing the time period in which he must commence suit against the company to enforce the policy.

Nearly two years after the storm and the resulting damage to his home occurred, Dominish filed suit against Nationwide. Nationwide argued that the suit was barred by the limitation-of-action clause in Dominish's policy, which read:

Suit Against Us. No action can be brought against us unless there has been full compliance with the policy provisions. Any action must be started within one year after the date of loss or damage.

The trial court agreed and granted Nationwide's motion for summary judgment. Dominish appealed and the Eleventh District Court of Appeals reversed, concluding that the policy language was ambiguous and that Nationwide had waived its right to enforce the one-year limitation clause by tendering two checks and agreeing to reinvestigate the damage to determine if Dominish was entitled to a higher settlement offer.

The Supreme Court reversed the Eleventh District and held that Nationwide could enforce its limitation-of-action clause because there was no ambiguity in the clause and Nationwide did not waive its rights by its actions.

On the first issue – whether the clause was ambiguous – the Supreme Court found that the terms of the clause were easily understandable from the context. The Court noted that the word “start” was not ambiguous, even though it is not commonly used to indicate the commencement of a lawsuit, because it was used in a provision titled “Suit Against Us.” Likewise, the term “action” was not ambiguous given that it also fell within the paragraph entitled “Suit Against Us.” The Court reasoned that there is an inherent trade-off between using concise language and specific descriptions.

Next, the Court analyzed whether Nationwide waived its right to enforce the limitation-of-action clause. Under Ohio law, for an insurance company to waive such a right, it must have either: (1) “recognized liability,” or (2) “held out a reasonable hope of adjustment and by doing so, induced the insured to delay filing a lawsuit until after the contractual period of limitation had

expired.”

Ultimately, the Court concluded that Nationwide offered to pay for the part of the claim for which it deemed itself liable, while denying all other claims; had a limitation-of-action clause in its policy, of which it informed Dominish and that Nationwide asserted the clause at every possible instance; and that Dominish was not induced to forbear filing suit by anything that Nationwide did.

Authors

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